IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2656 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SR SINGH

Versus

MANAGER

Appearance:

1. Special Civil Application No. 2656 of 1988

MS KHERAWALA on behalf of MR BP TANNA for PetitionerNo. 1

MR MA BUKHARI, AGP for Respondent No. 1

MR JR NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 21/03/2003

ORAL JUDGEMENT

The petitioner, in this petition, has sought the mandatory directions from this Court, directing the

respondent No.1 to treat the petitioner as senior to the respondent No.2. The petitioner has also prayed for quashing and setting aside of the order dated 7-5-1988 passed by the respondent No.1, whereby the respondent No.2 was placed ahead of the petitioner in the seniority list.

2) The brief facts given rise to the present petition are that the petitioner was working since 1966 in the Camera Department of the Government Photolytho Press, Dudheshwar Road, Ahmedabad. From 2-5-1970, the petitioner has been working as Camera Operator and was confirmed on the same post on 1-4-1971. The respondent No.2 has been promoted as Camera Operator with effect from 11-5-1985. Despite this fact, the respondent No.2 was made senior to the petitioner by an order dated 7-5-1988. The petitioner has further submitted that after promoting the respondent No.2 as Camera Operator on 11-5-1985, the respondent authority has suddenly changed its stand and asked explanation from the petitioner vide letter dated 13-12-1987, as to why respondent No.2 should not be put in rank higher to the petitioner. The petitioner was again asked on 13-1-1988 and 18-2-1988 repeatedly as to why the respondent No.2 should not be placed above the petitioner. The petitioner thereafter made representation on 7-3-1988 wherein it was stated that the judgements which were referred in the letters issued by the respondent-authorities would not say that respondent No.2 is senior to him. The petitioner has also pointed out that the Helio Printers were never above Camera Operators. Prior to 1975, Helio Printers were getting the pay-scale of Rs.425-700 and hence the respondent No.2, who has been promoted on 11-5-1985 could not have been given seniority. The petitioner further submitted that on 23-3-1988, the department has published a provisional seniority list in which the name of the petitioner was shown at Sr.No.1 while the name of respondent No.2 at Sr.No.2. The petitioner was, therefore, of the view that the department might have considered his representation and have rightly placed the petitioner in the seniority list ahead of the respondent No.2. However, in the impugned order dated 7-5-1988, the petitioner was placed behind the respondent No.2 and hence the said order is challenged by the petitioner in the present petition.

3) The petition was admitted by this Court on 6-12-1990. The affidavit in reply was filed by the respondent No.1, wherein it was stated that the petitioner was appointed as Technical Assistant on 30-7-1966 in Process Section of Government Press. The

Camera unit was also included in Process Section. The petitioner was appointed as Camera Operator from 2-5-1970 and was confirmed as such on 1-4-1971. The post of Head Photographer had fallen vacant due to suspension of one Mr.L.N. Pandey and therefore, the petitioner was asked to hold additional charge of the post of Head Photographer, in addition to his duties, by office order dated 9-12-1983. The respondent No.2 was working as Helio Printer in Process/Camera Section from 5-8-1969, which post was equivalent to the post of Camera Operator. The respondent No.2 was confirmed as Technical Assistant on 1-4-1971 and was appointed as Camera Operator from 11-5-1985. Since the pay scale of Camera Operator has been changed in 1975 and higher pay scale was given to Camera Operator then the other posts, namely, Printer, Technical Assistant, etc., the respondent No.2 being senior person in Process Section had filed a Special Civil Application No.1531/1979 for giving equivalent pay scale as that of Camera Operator. In the said petition, this Court has directed the department to decide the grievances regarding pay scale only and not seniority as contended by the petitioner. It was further stated that prior to revision of pay scale in 1975, the seniority of Camera Operator, Helio Printer, Vandyke Operator and Technical Assistant was common and in this seniority list the respondent No.2 was senior to the petitioner and as such he had represented to the State Government to post him as Camera Operator. After considering the representation of the respondent No.2, the Government had issued instructions by letter dated 11-9-1978 to consider the request of respondent No.2 and accordingly, the respondent No.2 was promoted as Camera Operator vide order passed on 26-2-1979. However, the said order was challenged before this Court and ultimately after the decision of the said writ petition, the respondent No.2 was promoted as Camera Operator with effect from 11-5-1985. It was further stated that in Letters Patent Appeal No.48/1985, this Court has directed the department to fix the inter se seniority of respondent No.2. and the petitioner and accordingly, the seniority was fixed by the department putting the respondent No.2 ahead of the petitioner. It was further stated that since the Helio Printer and Camera Operator were equivalent post prior to 1975 Rules, the respondent No.2 has been promoted as Helio Printer on 5-8-1969, which was the equivalent post to Camera Operator where the petitioner was promoted on 2-5-1970, i.e. after 9 months from the date of promotion of the respondent No.2 and hence the respondent No.2 has been considered senior to the petitioner.

4) The petitioner has also filed affidavit in rejoinder reiterating that the petitioner should be placed ahead of the respondent No.2 in the seniority list and after contending that the Helio Printer cannot become Head Photographer directly. He has to become Camera Operator first. The respondent No.2 has also filed his affidavit in reply urging that the claim of the petitioner for seniority is not maintainable and the petitioner has no right to revoke extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

5) The petitioner has also filed affidavit in rejoinder to the affidavit in reply filed by the respondent No.2 and submitted that he has been working as Head Photographer since 1987 and in that view of the mater, the respondent No.2 is precluded from making any grievance. He has further submitted that since he had become Head Photographer, the respondent No.2 could not claim any promotion to the post of Head Photographer only because of the deemed date of appointment in the lower cadre.

6) Heard Ms.Kherawala, learned advocate appearing for Mr.B.P.Tanna learned Senior Advocate for the petitioner and Mr.M.A.Bukhari, learned Assistant Government Pleader for respondent No.1 and Mr.J.R.Nanavati, learned advocate appearing for respondent No.2.

7) After having heard the learned advocates appearing for the respective parties and after having considered the memo of petition along with the documents attached therewith, as well as affidavit in reply filed by the respondents and the affidavit in rejoinder filed by the petitioner, I am of the view that the dispute is in a very narrow compass. As a result of the prolong litigation, the Government has decided that since the Helio Printer and Camera Operator were equivalent posts prior to 1975 Rules and the respondent No.2 has been promoted as Helio Printer on 5-8-1969 whereas the petitioner was promoted as Camera Operator on 2-5-1970, the respondent No.2 has been considered senior to the petitioner. After having come to the said finding the respondent No.1 has passed the order on 7-5-1988, wherein also it was mentioned that prior to the coming into force of the new recruitment Rules in the Press Camera Department, the post of Helio Printer was higher than the post of Camera Operator and the respondent No.2 was promoted to the post of Helio Printer on 5-8-1969, whereas the petitioner was promoted to the post of Camera

Operator on 2-5-1970. The respondent No.2 was rightly placed ahead of the petitioner in the seniority list. While passing the said order, the respondent No.1 has also taken into consideration, the directions issued by this Court in Special Civil Application No.573/1979 and 525/1989, as well as in Letters Patent Appeal No.48/1985. Not only this, the respondent No.1 has also observed that on the auxiliary post also, which was the feeder cadre of the Helio Printer, the respondent No.2 was senior to the petitioner. After taking into consideration all these aspects, the order was passed by the respondent No.1. In my view, the said order cannot be considered to be unjust, improper, unlawful or illegal and the same cannot be said to be in violation of Articles 14 and 16 of the Constitution of India. Since, there was anomaly in the pay scale and the Camera Operator was given higher pay scale, pursuant to the recommendations made by Desai Pay Commission, the representation was made by the respondent No.2, which was duly considered and to remove that anomaly, the respondent No.2 was also promoted as Camera Operator on 11-5-1985. For all other practical purposes, the respondent No.2 was senior to the petitioner and therefore, he was granted all consequential benefits. Having regard to the facts and circumstances of the case and having regard to the minute examination of the rival submissions of the respective parties, I am of the view that respondent No.2 was rightly placed ahead of the petitioner in the seniority list and hence, there is no substance or merits in the petition.

8) The petition, therefore, fails. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

(K.A.Puj, J.)
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